STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Supreme Court Case No:

CHARLES PITTS,
Plaintiff/Appellee,

Court of Appeals No: 260116

Lower Case No: 02-243658-DP
Judge Duncan M. Beagle

vs.

SUSAN BEAM, (aka CAPANZZI)
Defendant/Appellant

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DEFENDANT/APPELLANT'S RESPONSE BRIEF

STATEMENT OF SERVICE

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RESPONSE TO PLAINTIFF/APPELLEE'S APPLICATION FOR LEAVE TO APPEAL

NOW COMES Defendant/Appellant Susan Beam, by and through her attorney, Debra F. Donlan, states in support of her response:

1. On December 27, 2004 the Court filed its Order with the Genesee Circuit Court denying the Defendant/Appellant's Motion to Rescind Order of Filiation but returned the minor child to the Mother pending an evidentiary hearing in April of 2005.

2. The first time the Mother knew there was an Order of Filiation naming Charles Pitts the Father was when the sheriff arrived at her home in Florida on November 24, 2004. They arrived with a pick-up order for her three (3) year old daughter. She was ordered by the Florida courts to allow her daughter to return to Michigan with Charles Pitts (a stranger to the child) because he held legal documents and a custody order she had never seen before. The child was taken to a motel room where she stayed with Charles Pitts until she was taken by him to Michigan and until Susan Beam was able to procure an attorney and file papers for her daughter's return. This time period was approximately three weeks. Although she filed her papers on December 1, 2004, the trial Judge refused to grant an ex-parte order returning the minor child to her.

The child was returned to Susan Beam on December 11, 2004, however the custody order was not set aside.

3. The Appellant was served with a Complaint for Paternity before she left for Pennsylvania however she sought legal advice from a local attorney described in the record who told her she did not need to worry about it.

4. The Order of Filiation devoid of a support obligation but granting Charles Pitts joint custody of the minor child was entered on the testimony of Charles Pitts as the Mother, Susan Beam, did not have any notice of this action. That at the time the Order and Complaint for Paternity was filed Charles Pitts knew that Susan Beam was married. His own response to the Defendant/Appellant's Motion to Rescind admits that he knew she was married at the time of filing his complaint and at the time he sought to enter all subsequent orders. The trial court noted the proofs of service contained in the file went to Susan Beam's Michigan address. Plaintiff/Appellee's allegations all through the proceedings were that he did not know where Mother was but that she went to Pennsylvania. Alternate service was never ordered and custody was granted to a man that in the State of Michigan never had standing to bring this action.

5. That the minor child at issue, Nia Michelle Beam, was born January 17, 2001. That Susan Beam was married to George Alan Beam from 1982 until January 25, 2001 when he passed away. That although a divorce action had been filed prior to his death there was never a determination that George Alan Beam was not the Father of Nia. Knowing this the Court refused to set aside the Order of Filiation.

6. The Defendant/Appellant filed with the Michigan Court of Appeals an Appeal of Right January 5, 2005 requesting relief because custody was involved, however the

Court of Appeals rejected her argument and dismissed her appeal on January 21, 2005 stating that the claim of appeal lacked jurisdiction because the December 22, 2004 order (filed December 27, 2004) is a post judgment order that does not affect the custody of the minor. The Defendant/Appellant received this notification from the Court of Appeals on January 24, 2005 and immediately began working on her delayed application for leave to appeal under MCR 7.205.

7. The pleadings alone are unenforceable as a matter of law. Charles Pitts never had standing to bring the Paternity suit. His pleadings say the minor child was born out of wedlock which he now acknowledges was untrue. Susan Beam was caring for her three minor children when she moved in with her parents in Pennsylvania for financial and emotional support in October of 2002. Charles Pitts never filed when the Appellant Mother was living in Michigan; he waited almost two years before filing a complaint for paternity and he knew from his pleadings that she was in Pennsylvania, yet he continued to inform the court he did not know where she was living.

8. In *Aichele v Hodge* (2003) 674 N.W. 2nd 452 Appeal denied, 259 Mich App 146 the Court of Appeals held that an improperly executed Affidavit of Parentage did not provide putative father with standing; that the putative father lacked standing to seek custody and parenting time with child and that the putative father did not have a protected liberty interest with respect to a child he claimed as his own. In light of our most recent case law Plaintiff/Appellant filed his application for leave incurring more attorney fees in this matter.

9. The Defendant/Appellant is currently unemployed and has had to borrow money for her attorney fees. Appellant's attorney fees are $10,351.00 and costs of $1,1646.86.

WHEREFORE, Defendant/Appellant respectfully requests the following relief:

1 Deny application for leave to appeal.

2. Order Plaintiff/Appellee to pay the Defendant/Appellant's attorney fees in the amount of $10,351.00 and costs $!,646.86 in this matter.

3. Grant Defendant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Dated: May 2, 2005

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PREPARED BY:
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STATEMENT OF JURISDICTION

This Court has jurisdiction over this Application for Leave To Appeal pursuant to MCR 7.301 (2).

STANDARD OF REVIEW

Questions of law are reviewed for clear legal error. *Fletcher v Fletcher*, 229 Mich App 19; 581 NW2nd 11 (1998),

A trial court commits clear legal error when it incorrectly chooses, interprets, or applies the law.

STATEMENT OF ISSUE INVOLVED

DID THE TRIAL COURT COMMIT LEGAL ERROR WHEN IT REFUSED TO SET ASIDE THE ORDER OF FILIATION KNOWING THE CHILD WAS BORN IN WEDLOCK?

The Trial Court states the answer is "no".
The Appellee states the answer is "no".
Appellant states the answer is "yes".
The Court of Appeals states the answer is "yes".

STATEMENT OF FACTS

The Michigan Court of Appeals remanded this case back to the Circuit Court Judge on February 25, 2005 to grant Appellant's Motion to Vacate Default Order of Filiation and further relief requested. (Attached) The Circuit Court Judge's order of remand set aside the Order of Filiation but failed to order attorney fees and costs. (Attached)

The material facts of the case are not in dispute. Defendant-Appellant, Susan Beam, was married to George Alan Beam from April 15, 1982 until January 25, 2001. The minor child at issue, Nia Michelle Beam, was born January 17, 2001. After her husband's death on January 25, 2001, Susan Beam and her children (she had two other children with George Alan Beam) moved to Pennsylvania to live with her parents. She needed both financial and emotional support. She met Dan Capanzzi in Pennsylvania and married him on November 15, 2003. The family moved to Fort Meyers, Florida on August 24, 2004.

On November 24, 2004, two sheriff deputies of Lee County arrived at the Capanzzi home to remove Nia Beam, equipped with a pick-up order for Nia and a bench warrant against Susan Beam, signed by Judge Duncan M. Beagle of Genesee County, State of Michigan. Susan Beam and her husband immediately hired a Florida attorney to fight the pick-up order, explaining to the Florida Judge she was unaware of any custody/pick-up order or that there was a bench warrant for her. Circuit Court Judge

Margaret Steinbeck in Lee County, State of Florida reviewed the orders on their face and ruled jurisdiction was Michigan and upheld the State of Michigan orders.

The Capanzzi/Beam family was devastated and in shock. Nia, three (3) years of age was removed from the only family she knew and taken on November 24, 2004 to a hotel room with Charles Pitts. Charles Pitts returned to Michigan with Nia. He did not contact the Court as ordered nor did he allow frequent phone contact.

Susan Beam immediately sought counsel in Michigan and filed a motion to rescind the Order of Filiation and return her daughter to her. On December 10, 2004 the court allowed oral argument. Charles Pitts testified and in his filed response revealed that he knew Susan Beam was married at the time Nia was conceived and born.

The Judge in Michigan ordered Charles Pitts and Susan Beam to file sworn Affidavits by December 9, 2004. In Charles Pitts' affidavit he stated again under sworn testimony that he knew Susan Beam was married when he signed and filed his Complaint for Paternity.

It is interesting that the Genesee County Circuit Court received a letter stating the Vital Records Department could not process a birth certificate correction without a document stating George Beam is not the father of Nia. There was no such document but the Circuit Court sent the "Default" Order of Filiation. A birth certificate listing Charles Pitts as the father was never issued. A birth certificate was never issued with Charles Pitts names as the Father.

Granting Charles Pitts joint custody in the Order of Filiation without a proper motion was in violation of the Paternity statute. Further, granting physical custody of the minor child to Charles Pitts without an evidentiary hearing without a showing of any evidence remotely related to the twelve factors of the Child Custody Act was not in the best interest of Nia the minor child.

The basis for the pick-up order was that he did not know where Susan Beam was living. Service on Mother was perfected by mailing to her address in Flint, MI however Charles Pitts knew she did not live there.

The Court denied the Defendant her relief but placed her daughter back with her pending an evidentiary hearing on custody. The court further ordered contact between Charles Pitts and the minor child. The court in its order stated the Family court becomes increasingly frustrated with the lack of accountability of biological fathers in paternity cases. Yet, Charles Pitts never provided support failed to file for paternity for almost two years. The Order of Filiation does not include a support provision. Charles Pitts never alleged he had any relationship with the minor child. The Pick-up order though granted was not acted upon for a over a year. Charles Pitts stated he hired a private investigator but there was no evidence presented who it was or when it was. The Defendant/ Appellant testified she lived at 430 Ridge Avenue in Pennsylvania from March 2003 until August 24, 2004. She then moved with her new husband to Fort Meyers, Florida on August 24, 2004 with her minor children.

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DEFENDANT/APPELLANT'S BRIEF IN SUPPORT OF RESPONSE

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ARGUMENT

At issue in the instant case is whether in light of the Supreme Court ruling in *Girard v Wagenmaker*, 437 Mich 231, 470 N.W. 2d 372 (1991), the Plaintiff/Appellee, Charles Pitts, had standing to bring a cause of action under the Paternity Act, MCL 722.714 (b); MSA25.494 (b).

Under the Paternity Act, MCL 722.711, Sec. 1 (a), a "child born out of wedlock" means a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.

In the instant case, Charles Pitts through his attorney filed a Complaint for Paternity alleging the minor child was born out of wedlock. However, before the Court Charles Pitts stated he knew the mother was married at the time the child was conceived and at the time of her birth. A putative father of a child born in wedlock and without a court determination of paternity did not have a protected liberty interest with respect to a child he claimed as his own. U S C A. Const. Amend 14.

In *Aichele v Hodge*, (2003) 674 N.W. 2nd 452 Appeal denied, 259 Mich App 146, the Court of Appeals held that an improperly executed Affidavit of Parentage did not provide putative father with standing; that the putative father lacked standing to seek custody and parenting time with child and that the putative father did not have a protected liberty interest with respect to a child he claimed as his own.

On October 30, 2003, by peremptory order, our Supreme Court in *Kaiser v Schreiber*, (2003) 670 N.W. 2d 671 reversed 258 Mich App 357, upheld the ruling in *Girard v Wagenmaker*, 437 Mich 231, 470 N.W. 2d 372 (1991) and reversed the judgment of the Court of Appeals and reinstated the Circuit Court holding that the Plaintiff did not have standing under the Child Custody Act, MCL 722.21 and would not have standing under the Paternity Act, MCL 722.711, where the mother was married at the time of the minor child's conception and birth.

In the instant case, Charles Pitts knowingly filed a Complaint for Paternity knowing the mother was married but went even further and achieved a custody order without personal service on the mother. He claimed he did not know where she was in his pleadings but his attorney states on her proof of service that she made personal contact with the mother when she was in Pennsylvania. It is the position of the Defendant/Appellant that the Plaintiff/Appellee knew she was in Pennsylvania with her parents. Her testimony was that Charles Pitts was at her home when her parents were

moving her. There was no secret and there was certainly no hiding. There was no request for alternate service in the file or an affidavit of diligent search. Charles Pitts took advantage of the Court and went too far when he obtained a pick-up order for Nia Beam. The Defendant/Appellant believes the Circuit Court granted relief that is not authorized by law.

Charles Pitts never had standing to file a paternity action. The Order of Filiation does not contain a child support provision except that it was held in abeyance. The Order of Filiation did give Charles Pitts and Susan Beam joint custody and gave parenting time. Prior to entry of the Order of Filiation there was no motion for custody or parenting time as the Act requires. The custodial environment of the minor child had always been with her mother.

In the case at land the record is void of all those safeguards as courts of justice we aim to protect. Why was Charles Pitts unable to obtain a birth certificate for this child? The reason is noted in a letter to the Circuit Court from the Vital Statistics in Lansing, Michigan . Charles Pitts failed efforts were because mother was married and her husband, George Beam, was on the birth certificate as the father. There was no determination that George Beam was not the father. Even with that letter in the file the trial court issued a bench warrant for the mother and a pick-up order on the minor child ex-parte.

CONCLUSION

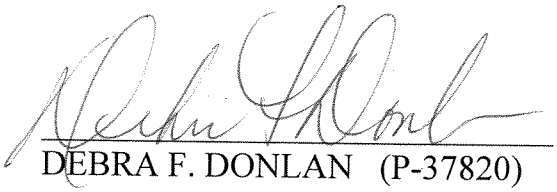
The Court of Appeals Order was not erroneous and was consistent with this Court's prior ruling. A different set of facts does not change the law where a man does not have standing to bring a paternity action when a child is conceived and born during wedlock and there has been no prior determination that the husband is not the father.

PRAYER FOR RELIEF

Susan Beam, Defendant/Appellant requests this Honorable Court deny the Plaintiff/Appellee's Application for Leave to Appeal and award her attorney fees and costs.

Dated: May 2, 2005

Respectfully submitted,



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